

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

----- x
SUN OPTICS, INC.
a Utah Corporation,

Plaintiff,

v.

FGX INTERNATIONAL, INC.,
a Delaware Corporation,

Defendant.
----- x

Index No. CV 07-137 (SLR)

DECLARATION OF ALEC TAYLOR

I, ALEC TAYLOR, state as follows:

1. I am employed by FGX International, Inc. ("FGX"), the defendant in the above-captioned Action. I have been employed continuously by FGX since October, 2005, and I serve as FGX's chief executive officer.

2. I am fully familiar with the facts set forth herein, am authorized to make the statements herein on behalf of FGX, and respectfully submit this declaration in opposition to plaintiff Sun Optics, Inc.'s April 5, 2007 motion for a preliminary injunction in *Sun Optics, Inc. v. FGX International, Inc.*, CV 07-137 (SLR).

FGX's Brands

3. FGX designs and sells reading glasses, sun glasses, other eyewear products and accessories under 13 different brand names. FGX's brands are directed to different consumers and sold into various distribution chains. For example, some of its brands are intended to reach the style-conscious consumer willing to pay for top design and quality, others to meet the needs of those with an active sports lifestyle, others to reach more cost-conscious purchasers, and still

others are directed at an older clientele. Consistent with the different consumers each brand is intended to capture, FGX sells some of its brands to high-end stores, others to large pharmacies and discount department stores, and still others to eye doctor's offices. Each brand is designed and marketed with a particular audience and distribution method in mind and at a different price point. This minimizes interbrand competition within FGX's product offerings.

4. FGX does not sell every product it manufactures to all of its customers. Instead, it strategically determines where to place its brands consistent with the brand image, price points and other business considerations.

FGX's Contracts

5. Over 80% of FGX's supply contracts for its reading glasses provide that FGX will be the primary supplier of reading glasses to its customers, not the exclusive supplier. Although FGX does have a few "exclusive" arrangements for reading glasses, those agreements only provide FGX a right of first refusal, after which the retailer is free to purchase products from another manufacturer. In the contracts that provide a right of first refusal, FGX generally chooses not to exercise that right. FGX does not have contracts with all of the distribution outlets for its reading glasses. For example, FGX does not have contracts with its eye doctor's office customers.

6. Based on my knowledge of the industry, the eyewear industry is not dominated by exclusive dealing arrangements and as a general rule retailers do not purchase exclusively from a single provider.

The Private Eyes Fixture

7. FGX's newest brand, Private Eyes, features stylish reading glasses available in numerous designs all marketed to and sold exclusively through the offices of eye care

professionals, i.e., eye doctor's offices. After submitting my April 2, 2007 declaration in support of FGX's motion to dismiss, I was able to confirm that not just substantially all, but rather all Private Eyes products have been sold to doctor's offices. I was similarly able to confirm that all marketing of the accused products was exclusively to doctor's offices.

8. FGX has no current plans to offer Private Eyes to any other distribution chain. To do so would be inconsistent with the marketing and branding of Private Eyes and would place Private Eyes in direct competition with some of FGX's other brands.

9. FGX provides the doctor's offices that carry its Private Eyes brand eyeglasses with fixtures that hold multiple pairs of glasses in a manner designed to be convenient for storage and display. The fixtures are provided free of charge as is the custom in the industry in order to make it more likely that the retailers will carry the displayed product. There are two sizes of Private Eyes fixtures: the smaller fixture holds 30 eyeglass cases and the larger holds 42. Attached as exhibit A is a true and correct picture of the smaller Private Eyes fixture. Attached as exhibit B is a true and correct picture of the larger Private Eyes fixture.

* * *

10. Prior to bringing its April 5, 2007 motion for preliminary injunction, plaintiff did not inform FGX that it had a pending patent or its belief that the Private Eyes fixture would infringe that pending patent, and plaintiff did not request that FGX stop making, using or selling its fixture.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 27, 2007.



Alec Taylor

EXHIBIT A



EXHIBIT B

